

**Borrego Water District**  
**MINUTES**  
**Regular Meeting of the Board of Directors**  
**Wednesday, November 17, 2010**  
**9:15 AM**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

**A. Call to Order:** President Kathy King called the meeting to order at 9:15 a.m.

**B. Pledge of Allegiance:** Those present stood for the Pledge of Allegiance.

**C. Roll Call:      Directors:      Present: President Kathy King, Abby King,  
Secretary/Treasurer Mendenhall, Shimeall**

**Staff:** Richard Williamson, General Manager  
Jerry Rolwing, Operations Manager  
Kim Pitman, Administration Manager  
Diana Del Bono, Administrative Assistant  
Allison Burns, Stradling, Yocca, Carlson & Rauth  
Wendy Quinn, Recording Secretary

**Public:** Judy Meier, *Borrego Sun*      Marshal Brecht  
Jim Engelke      Ken Gilstrap  
Ray Delahay      Grace Clark  
Tom Weber, Wm. Dale      Beverly Kuhrts  
   Young & Sons      Marilyn Regalado  
Beth Hart      Daureen Nelson  
Andrew Ciocca, Stern Bros.      Bob McKee  
Mervin Jordan      Doug Wilson, MTR  
Kathleen Gugg      Dennis Dickinson  
Dick Walker      Ray Larson  
Kathy Johnston      Joe Del Bono  
Frances Medema      Thomas Ray, Seley Ranch  
Tim Mendel      Don McKelvey  
Mary Mitts      Ray Wickel  
Gary Westover      Vic Levine  
Marilyn Moon      Ann Scimo

**D. Approval of Agenda:** *A motion was made by Director Mendenhall and seconded by Director Shimeall to approve the Agenda as written.* Rich Williamson requested that Item II.F, Presentation of FYE 2010 financial audit, be removed from the Agenda as it has not yet been finalized.

Allison Burns announced that an allegation had been made that the Agenda and/or the recommended actions violate the Brown Act. It was alleged that the Board intended to discuss Mr. Williamson's employment contract in closed session and that the draft agreement had not been distributed to the public. Ms. Burns explained that Item VII.A, Consideration and adoption of Agreement between the Borrego Water District and Richard S. Williamson, would not be discussed in closed session; only his performance review would be discussed in closed session, which is appropriate. She further pointed out that the draft agreement need only be distributed to the public when it was distributed to the Board, which occurred this morning. The District is in full compliance with the Brown Act.

Dennis Dickinson reported that he had called the District office on Monday to request a copy of the agreement with Mr. Williamson, and his request was denied by Diana Del Bono. She had understood it would be addressed in closed session. Ms. Burns explained that Ms. Del Bono does not attend the closed sessions and is not privy to the contents. Further, the agreement had not yet been finalized on Monday. President Kathy King confirmed that the agreement was completed late last night, and only the performance review would be discussed in closed session.

Marshal Brecht suggested that the closed session and Item VII be moved up to between Items I and II, since most of the public was here for that item and could leave thereafter if they so chose.

Haddon Salt expressed concern that a decision on Mr. Williamson's contract was being considered today, rather than waiting until the new Board members are seated. President Kathy King replied that Mr. Williamson had requested it be considered today. ***Directors Mendenhall and Shimeall amended their motion and second to provide for deletion of Item II.F and movement of Items VI and VII to between Items I and II. MSC: Mendenhall/Shimeall approving the Agenda as amended.***

**E. Comments from the Public and Requests for Future Agenda Items:** Beth Hart questioned whether consideration of the agreement between the District and Mr. Williamson was motivated by rumors circulated during the recent election campaign. She alleged there was a rumor that she and the other newly elected Directors intended to terminate Mr. Williamson's employment. On the contrary, Ms. Hart stated she liked Mr. Williamson and thought he was doing a good job. She claimed the termination rumor was circulated by supporters of the opponents of the successful candidates. She further explained that a position paper prepared by Director-elect Lyle Brecht, which may have been critical of Mr. Williamson, was prepared prior to his candidacy and reflected the views of people he interviewed, not his own views. Ms. Hart requested that consideration of the agreement with Mr. Williamson be tabled until the new Board has been seated.

Dick Walker read a statement from Lyle Brecht, who was unable to attend today. Lyle Brecht protested the action by the "lame duck" Board to consider an agreement with the General Manager just a few days before the new members take office. Since the public voted in the three new Directors, the decision should be deferred to them. Mr. Dickinson concurred.

Bob McKee thanked Kim Pitman for locating the December 2008 Minutes, which had been misplaced, documenting the Board's decision to activate its group health insurance benefits. He further expressed his concern regarding draft Resolution 2010-11-02, recognizing President Kathy King for her service, as it contained a signature block for her as President.

**F. Comments from Directors and Requests for Future Agenda Items:** Director Abby King encouraged the public to continue its discussions with the Board, and thanked Mr. Williamson, staff and fellow Directors for welcoming her as a newly appointed member. She questioned the new Board members' platform, considering the allegation that the campaign positions attributed to them were false. Pointing out that Directors Mendenhall and Shimeall would remain on the Board, she urged cooperation among the members.

Directors Mendenhall and Shimeall expressed their support for Mr. Williamson and commended him on his accomplishments. Director Shimeall encouraged the public to continue participating in Board and committee meetings.

**G. Correspondence:** Mr. Williamson announced that the Joint Powers Insurance Authority had completed its annual Risk Assessment and Training Visit to the District and commended us on our safety record and the condition of the facilities. He thanked Jerry Rolwing, Greg Holloway, Ms. Pitman and the field team for their continued good work.

**H. Approval of Minutes**

Regular Meeting of October 27, 2010

***MSC: Mendenhall/Shimeall approving the Minutes of the Regular Meeting of October 27, 2010 as written.***

Mr. McKee inquired about the swearing in procedure for the new Directors. Ms. Burns explained that once the election results are certified, the law provides that they sign their oaths on November 26. However, since this is a District holiday, it is contemplated they would sign in advance with a November 26 effective date. Mr. McKee pointed out that the candidates' statement provides for swearing in on November 26, and Ms. Burns agreed to investigate.

## **VI. CLOSED SESSION**

### **A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Reference Government Code Section 54956.8:**

Property: 199-080-21  
District Negotiator: Richard Williamson  
Negotiating Parties: Cameron Bros. Construction Company, L.P.  
Under Negotiation: Lease of Club Circle Golf Course

### **B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Reference Government Code Section 54956.8:**

Property: 141-210-04, 141-210-05, 140-130-45  
District Negotiator: Richard Williamson  
Negotiating Parties: Duane Young, VP Cocopah Nurseries, Inc.  
Under Negotiation: Consideration for interest in real property and terms of same

### **C. Public employee performance review (General Manager):**

The Board adjourned to closed session at 9:50 a.m., and the public session reconvened at 11:05 a.m. Ms. Burns announced that the Board gave direction to the real property negotiator relative to Items VI.A and B. There was no reportable action on any item.

## **VII. ADDITIONAL BUSINESS MATTERS**

**A. Consideration and adoption of Agreement between the Borrego Water District and Richard S. Williamson:** President Kathy King reported that Mr. Williamson had announced his intention to terminate his employment with the District, and the final agreement providing therefor is under consideration today. Ms. Burns outlined the provisions, which included continued employment through December 17, 2010; waiver of claims by both parties; three months' separation pay with insurance plus accrued vacation and sick leave; and right of re-employment upon mutual agreement by the parties. A form letter of recommendation, press release and internal memorandum were attached. Marshal Brecht reiterated that the new Board members did not intend to terminate Mr. Williamson. Mr. Williamson questioned how one could expect to serve under the conditions following the recent campaign. He added that he would consider a consulting agreement in the future, but felt his resignation at the time was best for all. Given the recent contentiousness, the new Board will have an opportunity to see how the District operates. He encouraged anyone to call him with questions, and thanked Ms. Hart for her comments. President Kathy King and Director Abby King commended Mr. Williamson for his accomplishments. ***MSC: A. King/Mendenhall adopting the Agreement between the Borrego Water District and Richard S. Williamson as presented.***

## **II. CURRENT BUSINESS MATTERS**

President Kathy King left the meeting at 11:20 a.m., recusing herself from Items II.A and B based on her position as a realtor.

**A. Consideration and Approval of Resolution 2010-11-01 *Resolution of the Board of Directors of the Borrego Water District acting as the legislative body of Community Facilities District no. 2007-1 (Montesoro) authorizing the execution and delivery of Amendment No. 2 to the Indenture and taking certain other actions in connection therewith:*** Ms. Burns explained that the proposed

Resolution would amend the action taken by the Board at its last meeting by providing for use of surplus funds in excess of the cap set forth in the bond indenture for administrative expenses. The cap was set for the protection of the bond holder against excessive expenses by the District, but the waiver under consideration has been requested by the bond holder. **MSC: Shimeall/A. King adopting Resolution 2010-11-01, Resolution of the Board of Directors of the Borrego Water District acting as the legislative body of Community Facilities District no. 2007-1 (Montesoro) authorizing the execution and delivery of Amendment No. 2 to the Indenture and taking certain other actions in connection therewith. RC: AYES – Shimeall, A. King, Mendenhall. RECUSED – K. King.**

**B. Consideration and possible action on request of Nuveen Asset Management requesting the District acting on behalf of the Community Facilities District, CFD-2007-1, to direct the Trustee to transfer moneys on deposit in the Surplus Fund to the Administrative Expense Account of the Special Tax Fund; to be applied pursuant to the Indenture to pay Administrative Expenses:** Ms. Burns explained that the proposed action would allow the transfer of funds authorized by the Resolution just adopted, from surplus to administrative. **MSC: A. King/Shimeall acting on behalf of the Community Facilities District, CFD-2007-1, directing the Trustee to transfer moneys on deposit in the Surplus Fund to the Administrative Expense Account of the Special Tax Fund; to be applied pursuant to the Indenture to pay Administrative Expenses. RC: AYES – A. King, Shimeall, Mendenhall; RECUSED – K. King.**

**C. Consideration and approval on amendments to survey and design assistance projects finalizing time and material expenditures (all costs are eligible for reimbursement through grants or use as local share match for grant awards). Engineering and design work includes: (1) Horizontal and topographic survey of alignment of access easement from S22 – North Clark Lake; (2) Survey monumentation for 5 acre well site and record of survey map, Section 28 (N. Clark Lake); (3) Indianhead tank site and topographic and horizontal control, Indianhead transmission main and alignment survey and drafting; (4) Reservoir tank site elevation bench-loop and associated drafting assistance:** President Kathy King returned to the meeting at 11:25 a.m. Mr. Williamson invited that Board's attention to information in the Agenda regarding survey and design drafting costs for the assistance of Brian Polley Surveying, which has provided services to the District over the past two years. The requested action is a housekeeping item to allocate expenses, not an authorization for new expenses. The costs are in accordance with the budget (\$221,060.13), and all funds are eligible for reimbursement. **MSC: A. King/Mendenhall approving amendments to survey and design assistance projects finalizing time and material expenditures (all costs are eligible for reimbursement through grants or use as local share match for grant awards). Engineering and design work includes: (1) Horizontal and topographic survey of alignment of access easement from S22 – North Clark Lake; (2) Survey monumentation for 5 acre well site and record of survey map, Section 28 (N. Clark Lake); (3) Indianhead tank site and topographic and horizontal control, Indianhead transmission main and alignment survey and drafting; (4) Reservoir tank site elevation bench-loop and associated drafting assistance.**

Mr. McKee questioned the projection on Agenda page 25 that the local wells may go dry in 30 to 50 years. Mr. Williamson explained that although the USGS estimated 50 more years for the aquifer, it is deeper in the north end of the valley, whereas the District's wells are at the south end and likely to go dry sooner. Mr. McKee expressed concern that golf courses use much more water than residents but are exempt from tiered rates. Mr. Williamson pointed out that the District purchased the well at Montesoro for the benefits of the rate payers, and the golf courses benefit the community in these economic times.

**D. Update on Change Orders for the Lift Station construction:** Mr. Williamson explained that as the new lift station nears completion, the back-up power and control system has been an issue. The original plans called for a new generator, but it has been determined that an existing generator can be used with some additional wiring (Change Order No. 1, \$6,720). Change Order No. 2 (\$8,650) provides for a step-down transformer to accommodate the generator. Change Order No. 3 provides for

cleaning an 18-inch PVC pipe which was flooded when a 2-inch line burst. The cost is approximately \$2,000. Mr. Williamson requested the Board's concurrence, which was granted.

**E. Presentation of potential private placement of Certificate of Participation:** Mr. Williamson introduced Drew Ciocca of Stern Brothers & Company, who had identified a source of funds through Certificates of Participation to replace the failed I-Bank loan. The money would be used to assist the District in agricultural fallowing and acquisition of water mitigation credits, which would offset the cost of the land. Marshal Brecht asked what the up-front cost to the District would be, and Mr. Ciocca estimated \$30,000 to \$40,000 for a \$1.5 million loan, plus legal expenses. Don McKelvey asked whether the lender would own the District's assets should it default. Mr. Ciocca thought this highly unlikely, but Ms. Burns noted that technically it could happen under the terms of Mr. Ciocca's memorandum. However, an agreement has not yet been drafted. Mr. Williamson agreed to work with Mr. Ciocca to develop a more detailed proposal for the Board's consideration.

**F. Presentation of FYE 2010 financial audit:** This item was deferred.

**G. Consideration and Approval of Resolution 2010-11-02 *Resolution recognizing President Katherine King for her years of service:*** Director Shimeall recommended that this and the next Resolution be amended to include the first names of Katherine King and Abby King in all references. Mr. Williamson commended President Kathy King for her service and presented her with a plaque. ***MSC: Shimeall/Mendenhall adopting Resolution 2010-11-02 recognizing President Katherine King for her years of service. RC: AYES – Shimeall, Mendenhall, A. King; ABSTAINED: K. King.***

**H. Consideration and Approval of Resolution 2010-11-03 *Resolution recognizing Director Abby King for her service:*** Mr. Williamson thanked Director Abby King for serving the District ably during a contentious time. ***MSC: Mendenhall/Shimeall adopting Resolution 2010-11-03 recognizing Director Abby King for her service. RC: AYES – Mendenhall, Shimeall, K. King; ABSTAINED – A. King.***

### **III. COMMITTEE REPORTS & PROPOSALS**

**A. Ad Hoc Committees:**

1. Personnel. The Personnel Committee activities were discussed previously.
2. Budget/Contract/Grants. No report.
3. Services Committee. No report.
4. Negotiating. No report.
5. Sewer. No report.
6. Capital Projects. No report.
7. Finance. No report.

**B. Standing Committees:**

1. Conservation. Director Shimeall invited the Board's attention to the Conservation Committee Minutes in the Agenda packet. Mr. Rolwing announced that the next meeting would be January 5, 2011. Mr. McKee questioned the report in the Minutes that a Proposition 218 process to change tiered rates could begin in January. He recalled a commitment that the existing rates would be in effect for five years, and offered to provide documentation. Mr. Williamson noted that any change would probably be considered after completion of Glen Reiter's rate design study, which is tentatively scheduled to be presented in January.

2. GWM. Director Mendenhall reported that the Groundwater Management Committee met last week. Mr. Williamson will have more information on this in his General Manager's report.

#### **IV. STAFF REPORTS**

**A. Manager's/Engineer's Report:** Mr. Williamson distributed his written report and summarized its contents. We are awaiting a decision from DWR on our application for an IRWMP planning grant. He and Mr. Rolwing attended a scoping meeting regarding the Bureau of Reclamation basin study. Documentation is expected to be submitted to the regional and national offices in January, 2011.

The District has executed an agreement with Viking Ranch to purchase 125 acres and 312.5 mitigation credits. The seller is retaining half the credits for future development.

Montesoro has overseeded its golf course.

The easement location, description and monumentation are being completed at Clark Lake.

The new lift station will be complete soon, and the Community Services District treatment plant will be moth balled.

The District has been awarded a STAG grant.

Negotiations are continuing for the purchase of palm groves for fallowing.

Mr. Williamson reported that the possible assumption by the District of stormwater management responsibilities has not been popular due to liability concerns. The idea has been tabled for now.

All District sewer facilities are in compliance with permit conditions. The system has been expanded to serve additional customers at the Roadrunner Club.

The Club Circle Golf Course lease agreement should be finalized soon, and rates may increase.

Vector control activities have been suspended due to the cold weather.

The Montesoro bond default foreclosures are proceeding.

Mr. Williamson invited the Board's attention to the budget comparison, indicating the District is spending less than projected. Revenues should be close to projection now that Montesoro has reseeded and is irrigating more. Grants anticipated in the next six months should yield approximately \$350,000 in refunds.

Another solar provider has submitted a proposal for consideration. Mr. Williamson suggested establishing a Solar Committee.

We are still awaiting a response regarding our grant application for the water education facility.

Mr. Williamson invited the Board's attention to Lyle Brecht's comments on the IRWM planning grant application, attached to the General Manager's report. Mr. Williamson clarified that the IRWM Policy Committee, not the Stakeholders Committee, is the decision-making body.

**B. Operations Report:** Mr. Rolwing reported that District operations are going smoothly. Staff is working on the preliminary design of the pipeline project in Montezuma Road, and residents have been informed of the upcoming work.

**C. Water and Wastewater Operations Report – October 2010:** Mr. Rolwing invited the Board's attention to his written report in the Agenda.

**D. Water Production/Use Records – October 2010:** Mr. Rolwing invited the Board's attention to his written report in the Agenda.

**E. Financial Reports – October 2010:** Ms. Pitman invited the Board's attention to her written report in the Agenda and offered to answer questions. Mr. McKelvey reported that he had difficulty obtaining information on the water availability charge on his property tax bill, and Mr. Rolwing explained that was handled by Taussig & Associates. Mr. Williamson urged Mr. McKelvey to attend the upcoming presentation on the rate design study.

Marshal Brecht noted a discrepancy in the cash and cash equivalents amounts shown on Agenda pages 62 and 64. Ms. Pitman explained that a transfer was made late in the month that was not reflected on page 62. The correct amount is \$1,383,722.

**V. ATTORNEY'S REPORT**

Ms. Burns reported hearings on our summary judgment motions on the Montesorro foreclosure were scheduled for early January.

After discussion, the Board agreed to schedule her Directors' duties and responsibilities workshop on December 15 following the Board meeting. The public is welcome.

Mr. Williamson announced a course coming up in February in Anaheim, Special District and Local Government Institute of Governance, which is excellent. More than two Board members may attend as long as they don't discuss District business, and the District would bear the cost.

**VIII. CLOSING PROCEDURE**

Adjournment. There being no further business, the meeting adjourned at 12:55 p.m. The next regular meeting of the Board of Directors is scheduled for December 15, 2010 at the Borrego Water District.